

AN ACT

RELATING TO TRADE PRACTICES; AMENDING THE UNFAIR PRACTICES ACT TO INCLUDE ITS APPLICABILITY TO SERVICES PROVIDED BY LICENSED PROFESSIONALS; CHANGING EXEMPTION PROVISION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 57-12-2 NMSA 1978 (being Laws 1967, Chapter 268, Section 2, as amended) is amended to read:

"57-12-2. DEFINITIONS.--As used in the Unfair Practices Act:

A. "person" includes, where applicable, natural persons, corporations, trusts, partnerships, associations, cooperative associations, clubs, companies, firms, joint ventures or syndicates;

B. "seller-initiated telephone sale" means a sale, lease or rental of goods or services in which the seller or his representative solicits the sale by telephoning the prospective purchaser and in which the sale is consummated entirely by telephone or mail, but does not include a transaction:

(1) in which a person solicits a sale from a prospective purchaser who has previously made an authorized purchase from the seller's business; or

(2) in which the purchaser is accorded the right of rescission by the provisions of the Consumer Credit Protection Act, 15 U.S.C. 1635 or regulations issued pursuant thereto;

C. "trade" or "commerce" includes the advertising, offering for sale, sale or distribution of any services and any property and any other article, commodity

or thing of value, including any trade or commerce directly or indirectly affecting the people of this state;

D. "unfair or deceptive trade practice" means any false or misleading oral or written statement, visual description or other representation of any kind knowingly made in connection with the sale, lease, rental or loan of goods or services or in the extension of credit or in the collection of debts by any person in the regular course of his trade or commerce, which may, tends to or does deceive or mislead any person and includes but is not limited to:

(1) representing goods or services as those of another when the goods or services are not the goods or services of another;

(2) causing confusion or misunderstanding as to the source, sponsorship, approval or certification of goods or services;

(3) causing confusion or misunderstanding as to affiliation, connection or association with or certification by another;

(4) using deceptive representations or designations of geographic origin in connection with goods or services;

(5) representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation or connection that he does not have;

(6) representing that goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used or secondhand;

(7) representing that goods or services are of a particular standard, quality or grade or that goods are of a particular style or model if they are of another;

(8) disparaging the goods, services or business of another by false or misleading representations;

(9) offering goods or services with intent not to supply them in the quantity requested by the prospective buyer to the extent of the stock available, unless the purchaser is purchasing for resale;

(10) offering goods or services with intent not to supply reasonable expectable public demand;

(11) making false or misleading statements of fact concerning the price of goods or services, the prices of competitors or one's own price at a past or future time or the reasons for, existence of or amounts of price reduction;

(12) making false or misleading statements of fact for the purpose of obtaining appointments for the demonstration, exhibition or other sales presentation of goods or services;

(13) packaging goods for sale in a container that bears a trademark or trade name identified with goods formerly packaged in the container, without authorization, unless the container is labeled or marked to disclaim a connection between the contents and the trademark or trade name;

(14) using exaggeration, innuendo or ambiguity as to a material fact or failing to state a material fact if doing so deceives or tends to deceive;

(15) stating that a transaction involves

rights, remedies or obligations that it does not involve;

(16) stating that services, replacements or repairs are needed if they are not needed; or

(17) failure to deliver the quality or quantity of goods or services contracted for; and

E. "unconscionable trade practice" means any act or practice in connection with the sale, lease, rental or loan, or in connection with the offering for sale, lease, rental or loan, of any goods or services, including services provided by licensed professionals, or in the extension of credit or in the collection of debts which to a person's detriment:

(1) takes advantage of the lack of knowledge, ability, experience or capacity of a person to a grossly unfair degree; or

(2) results in a gross disparity between the value received by a person and the price paid."

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Section 2. Section 57-12-7 NMSA 1978 (being Laws 1967, Chapter 268, Section 6) is amended to read:

"57-12-7. EXEMPTIONS.--Nothing in the Unfair Practices Act shall apply to actions or transactions expressly permitted under laws administered by a regulatory body of New Mexico or the United States, but all actions or transactions forbidden by the regulatory body, and about which the regulatory body remains silent, are subject to the Unfair Practices Act."